

## ECONOMIC SUBSTANCE AND TAX ABUSE IN UZBEKISTAN

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**Abstract.** Article 14 of the Tax Code of the Republic of Uzbekistan (2019) introduces two foundational anti-avoidance doctrines into the domestic tax system: the economic substance doctrine, which requires that transactions be characterized for tax purposes according to their actual economic content rather than their legal form, and the tax abuse concept, which empowers tax authorities to disregard transactions whose sole or predominant purpose is the unjustified reduction of tax liability. This article provides a detailed analysis of these provisions, examining their theoretical foundations, their relationship to similar doctrines in comparable jurisdictions, the procedural framework for their application under Article 14(8), and their interaction with the due diligence requirement of Article 15. The study assesses whether the current statutory framework provides sufficient clarity for taxpayers and authorities and identifies areas where supplementary guidance is needed.

**Keywords:** economic substance, tax abuse, anti-avoidance, general anti-avoidance rule, Uzbekistan, substance over form, tax planning.

### INTRODUCTION

The tension between legal form and economic substance is pervasive in tax law. Taxpayers, advised by legal and financial professionals, may structure transactions in ways that minimize their tax liability while achieving the same or equivalent economic outcomes that would attract higher taxes if structured differently. When such structuring involves genuine business decisions — choices of organizational form, timing, or counterparty that reflect rational economic preferences independent of their tax effects — the resulting tax savings are generally accepted as legitimate tax planning.

However, when structuring has no purpose other than tax avoidance, it may be seen as an abuse of the legal system — using the letter of the law to defeat its purpose. Article 14 of the 2019 Tax Code of Uzbekistan addresses this problem by codifying the economic substance doctrine and introducing an explicit concept of tax abuse applicable in Uzbek tax law.

### COMPARATIVE CONTEXT

Anti-avoidance doctrines exist in virtually all sophisticated tax systems, but their precise content and application vary significantly. The United Kingdom's statutory general anti-abuse rule (GAAR), introduced in 2013, focuses on "abusive" tax arrangements that cannot reasonably be regarded as a reasonable course of action. Australia's Part IVA general anti-avoidance provision targets schemes with the "dominant purpose" of obtaining a tax benefit. The United States applies judicially developed doctrines including economic substance, business purpose, step transaction, and substance over form.

The OECD's Base Erosion and Profit Shifting (BEPS) project has encouraged countries to adopt both treaty-level anti-abuse provisions (through the OECD's Multilateral Instrument) and domestic anti-avoidance rules. Uzbekistan's Article 14 reflects these international developments, albeit with a formulation that differs in important respects from comparable foreign provisions.

## **THE ECONOMIC SUBSTANCE DOCTRINE (ARTICLE 14(1)-(2))**

Article 14(1) establishes that for tax purposes, all transactions and other economic relationships of a taxpayer shall be considered based on their actual economic content, regardless of how they are legally formalized or what the contract is called. This provision authorizes tax authorities to look through legal form to economic reality — to recharacterize a transaction that is styled as, say, a loan as an equity contribution, or a service payment as a dividend, if the economic substance supports such recharacterization.

Article 14(2) elaborates the consequences: if the legal formalization of a transaction or economic relationship does not correspond to its actual economic content, the tax authority is entitled to change the legal characterization of the transaction, the taxpayer's status, and/or the characteristics of their economic activity for tax purposes. This power of recharacterization is potentially very broad, and its exercise requires careful assessment of all relevant facts and circumstances.

## **THE TAX ABUSE CONCEPT (ARTICLE 14(5)-(7))**

### **Definition of Abuse**

Article 14(5) provides that if a taxpayer carries out operations or sequences of operations whose sole or primary purpose is the unjustified receipt of tax benefits or a reduction in the amount of taxes payable, such actions constitute tax abuse. Article 14(6) extends this to schemes for reducing taxes where reduction is a direct or indirect purpose or consequence, and this purpose or consequence is not secondary.

### **Consequences of Abuse**

Under Article 14(7), where tax abuse is found, tax authorities may disregard individual operations or sequences of operations exhibiting characteristics of abuse in determining the taxpayer's tax liability. They may also adjust the amounts of taxes payable in a manner that eliminates the effects of the abuse. These consequences are significant and potentially result in substantial additional assessments beyond what the formal legal documentation of the transaction would suggest.

## **PROCEDURAL FRAMEWORK (ARTICLE 14(8))**

Article 14(8) provides that the identification of instances of tax abuse and fictitious transactions, and the application of consequences, is carried out by tax authorities, and — in cases where the taxpayer disagrees — by courts on the claim of the tax authority. This procedural framework is important: it places the burden of proof on the tax authority to establish abuse in the first instance, and requires judicial resolution in contested cases. This is a more taxpayer-protective approach than systems where the authority's characterization stands unless overturned on appeal.

## **DUE DILIGENCE INTERACTION (ARTICLE 15)**

Article 15 is directly linked to the anti-abuse framework through the concept of due diligence. A taxpayer who fails to exercise due diligence in selecting counterparties — by not verifying their tax registration, business reputation, financial capacity, and compliance history — may lose the right to deduct expenses incurred in transactions with those counterparties. This provision effectively makes taxpayers responsible for the tax compliance of their supply chain, creating powerful incentives for formal transacting and verification practices.

## **CONCLUSION**

Article 14 of the 2019 Tax Code of Uzbekistan provides a broadly appropriate framework for addressing tax abuse and ensuring that transactions are characterized according to their economic substance. Key areas for further development include: issuance of detailed administrative guidance clarifying the standard for "primary purpose" in the abuse analysis; development of binding advance ruling procedures that allow taxpayers to obtain certainty about the characterization of planned transactions; and training of tax authority staff in the application of complex economic analysis required for substance-over-form determinations. Together, these measures would improve the predictability and fairness of the anti-abuse framework while maintaining its effectiveness as a constraint on aggressive tax planning.

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